

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | CASE NO. 1:19 CR 330 |
| |) | |
| Plaintiff, |) | JUDGE DONALD C. NUGENT |
| |) | |
| v. |) | |
| |) | |
| GREGORY D.FRANKLIN, II, |) | <u>MEMORANDUM OPINION</u> |
| |) | <u>AND ORDER</u> |
| Defendant. |) | |

This matter comes before the Court upon Defendant, Gregory Franklin II's Motion to File Relation Back Under 15(c)(1)(B). (ECF #164). The Government filed a Response in Opposition, arguing the this Court lacks jurisdiction to decide the motion. (ECF #171). After Mr. Franklin filed his motion, he filed a notice of appeal from the dismissal of his original §2255 motion. Once the appeal was filed, this Court was divested of jurisdiction to consider any motions related to the original §2255 motion.


It has long been understood that "filing a notice of appeal with the district court divests the district court of jurisdiction to act in a case, except on remedial matter unrelated to the merits of the appeal." *United States v. Williams*, No. 05-3293, 2006 WL 3203748, at *6 (6th Cir. Nov. 6, 2006). This is true even if a motion, which is yet undecided, had been filed prior to the filing of the Notice of Appeal. Defendant's argument in his motion is that the matters raised in his

motion concern the same claim that is currently on appeal, and are, thus, related to the merits of his §2255. Further, the motion does not address any of the excepted remedial measures that would allow this Court to decide the matter during the pendency of an appeal. Finally, the Court of Appeals, though it had originally indicated that it would hold the appeal in abeyance pending resolution of this motion, later filed a Notice stating that the motion was not a motion identified in Fed. R. App. P. 4(a)(4)(A), and consequently the appeal was no longer being held in abeyance. (ECF #168).

Because the Court is currently without jurisdiction to address Mr. Franklin's motion, the motion shall be dismissed without prejudice. (ECF #164).

IT IS SO ORDERED.

DATED: February 27, 2024


DONALD C. NUGENT
United States District Judge